



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Troopers Association

Complainant

v.

New Hampshire Department of Safety, Division of
State Police & State of New Hampshire

Respondent

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Case No. P-0754-19

Decision No. 2007-163

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On August 30, 2007 the New Hampshire Troopers Association ("Association") filed a complaint claiming that the New Hampshire Department of Safety, Division of State Police ("State") violated RSA 273-A:5, I(h) when the State allegedly refused to fully compensate six New Hampshire State Troopers for their work in response to an emergency call back to work. The Association contends that the troopers should have been compensated beginning when they received the emergency call back to work while attending a sporting event in Massachusetts, and not from the later time when they signed on to their cruisers upon their return to New Hampshire. Additionally, the Association alleges that the State violated RSA 273-A:5, I (a) and (d) because of the statements of Captain Conte to two of the troopers during a discussion of the troopers' relevant weekly time record. According to the Association, at this time Captain Conte told Trooper Gilbert that he was no longer considered sergeant material and he told Trooper Sonia that he was on probationary status.

As remedies, the Association requests that the PELRB 1) declare that the State committed an unfair labor practice by refusing to pay the troopers for the entire period of call-back travel time; 2) order the State to pay the troopers for their full call-back travel time; 3) declare that the State committed an unfair labor practice by threatening retaliation against two troopers who requested full compensation for call-back travel time, 4) order the State to not retaliate against the two troopers, and 5) order such other and further relief as may be just.

The State's deadline to file a response to the complaint was extended to October 12, 2007 by virtue of Assented to Motions for Extension of Time submitted on September 14, 2007 and on September 28, 2007. On October 12, 2007, the State filed its response to the complaint and a motion to dismiss. The State alleges that the complaint should be dismissed under the doctrines of res judicata and collateral estoppel because of this board's prior decision in *New Hampshire Troopers Association v. New Hampshire Department of Safety, Division of State Police*, PELRB Decision No. 2003-029. The State contends that the Association already litigated the same claims and issues in this earlier case which ended in the State's favor.

Additionally, the State claims that the matter should be dismissed because the Association's retaliation claim fails to state a claim upon which relief may be granted. The State claims that the Association has failed to allege any facts which, if true, would entitle the Association to relief under RSA 273-A:5, I (a) and (d).

The Association filed its objection to the motion to dismiss on October 29, 2007. The Association maintains that the facts and analysis at issue in *New Hampshire Troopers Association v. New Hampshire Department of Safety, Division of State Police*, PELRB Decision No. 2003-029 are distinct from those currently before the board. The Association further claims that to the extent PELRB Decision No. 2003-029 applies to the present case it supports the Association's position. The Association states that its complaint is otherwise sufficient to establish a claim under RSA 273-A:5, I (a) and (d).

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on November 26, 2007.

PARTICIPATING REPRESENTATIVES

For the Association: James W. Donchess, Esq.

For the State: Marta A. Modigliani, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the Association's contractual violation claim should be dismissed by virtue of this board's earlier 2003 decision?
- (2) Whether the Association's retaliation claim should be dismissed for failure to state a claim upon which relief may be granted?
- (3) Whether the State unlawfully violated the parties' collective bargaining agreement by refusing to compensate the troopers from the time they received the emergency call back?
- (4) Whether the State unlawfully threatened retaliation against the troopers Gilbert and Sonia for their pursuit of full compensation for call-back travel time?

WITNESSES

For the Association (the Association had not filed its Pre-Hearing Worksheet at the time of the Pre-Hearing, however, the Association identified its likely witnesses and exhibits at the Pre-Hearing):

1. Trooper Robert Estabrook
2. Trooper Paul Hunt
3. Trooper John Encarnacao
4. Trooper Scott Gilbert
5. Trooper Fred Lulka
6. Trooper John Sonia
7. Additional witnesses to be identified regarding compensation paid for call-backs from locations other than a trooper's residence.

For the State:

1. Colonel Frederick Booth
2. Captain Russell Conte
3. Major David Kelley (Ret.)
4. Earl Sweeney
5. Tom Manning

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party.

EXHIBITS

For the Association:

1. Any documentation, i.e. payroll receipts, relating to compensation paid to troopers responding to call backs from locations other than their residence.
2. Collective bargaining agreements.

For the State:

1. Collective bargaining agreements for the period of 2002 through the present.
2. CAD logs for May 11, 2007.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is 3 hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least 20 days prior to the date of the evidentiary hearing.

DECISION

1. On or before December 10, 2007 the Association shall file its pre-hearing worksheet and a specification setting forth in more detail the factual basis for the claims made in its complaint, including instances where a trooper has received compensation for call backs from locations other than his/her residence and the interactions with Captain Conte which form the basis for the Association's retaliation charge.
2. The parties shall file any additional responsive pleadings or other motions no later than January 4, 2008, and any responses or objections thereto shall be filed on or before January 14, 2008.
3. At the pre-hearing conference, the State advised that one of its witnesses, Major Kelly, may or may not be available on the scheduled hearing date. If Major Kelly cannot attend the January 15, 2008 hearing, the record shall be held open until February 15, 2008 in order to allow the parties to conduct, and submit the transcript of, a trial deposition of Major Kelly. The parties should attend to the scheduling of Major Kelly's deposition in a timely manner in order to ensure its submission, if necessary, within these time frames.
4. The parties' representatives shall meet, or otherwise confer, on or before January 11, 2008, to attempt to stipulate to the submission of this case in writing or, in the alternative, without the need for formal testimony. The parties shall file forthwith a joint statement setting forth any such agreement and include a proposed schedule for the parties' filings.
5. Counsel shall meet, or otherwise confer, on or before January 11, 2008, in order to agree on joint exhibits and to compose a mutual statement of agreed facts. The parties' shall file all joint exhibits, factual stipulations, and other exhibits properly marked for

identification on or before January 11, 2008. If these materials are submitted electronically the parties do not have to otherwise file the original and five copies.

6. Counsel shall file any amendments to, or deletions from, their Witness and Exhibit lists, at least 5 days prior to the scheduled hearing date.

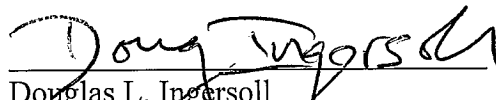
Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

January 15, 2008 @ 9:30 a.m.

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

November 27, 2007.


Douglas L. Ingersoll
Staff Counsel/Hearing Officer

Distribution:

James W. Donchess, Esq.
Marta A. Modigliani, Esq.